

FORM 104 (10/06)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS JOE JESSE MONGE and ROSANA ELENA MONGE	DEFENDANTS ALICIA ROJAS and FRANCISCO JAVIER JAYME	
ATTORNEYS (Firm Name, Address, and Telephone No.) Sidney Diamond, PC, 3800 N. Mesa, El Paso, TX 79902 (915) 532-3327	ATTORNEYS (If Known) Suite B-3	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Recovery of money/property §542 Turnover of Property And Validity, Priority or Extent of Lien or Other Interest In Property FRBP 2001(2)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<p>FRBP 7001(1) – Recovery of Money/Property</p> <p><input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other</p> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <p><input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</p> <p>FRBP 7001(3) – Approval of Sale of Property</p> <p><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</p> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <p><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</p> <p>FRBP 7001(5) – Revocation of Confirmation</p> <p><input type="checkbox"/> 51-Revocation of confirmation</p> <p>FRBP 7001(6) – Dischargeability</p> <p><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny</p> <p>(continued next column)</p>		
<p>FRBP 7001(6) – Dischargeability (continued)</p> <p><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other</p> <p>FRBP 7001(7) – Injunctive Relief</p> <p><input type="checkbox"/> 71-Injunctive relief – reinstatement of stay <input type="checkbox"/> 72-Injunctive relief – other</p> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <p><input type="checkbox"/> 81-Subordination of claim or interest</p> <p>FRBP 7001(9) Declaratory Judgment</p> <p><input type="checkbox"/> 91-Declaratory judgment</p> <p>FRBP 7001(10) Determination of Removed Action</p> <p><input type="checkbox"/> 01-Determination of removed claim or cause</p> <p>Other</p> <p><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)</p>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

FORM 104 (10/06), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR JOE JESSE MONGE and ROSANA ELENA MONGE		BANKRUPTCY CASE NO. 09-30881
DISTRICT IN WHICH CASE IS PENDING WESTERN DISTRICT OF TEXAS	DIVISIONAL OFFICE EL PASO DIVISION	NAME OF JUDGE LIEF M. CLARK
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE 06/14/2010	PRINT NAME OF ATTORNEY (OR PLAINTIFF) SIDNEY J. DIAMOND	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:

JOE JESSE MONGE and
ROSANA ELENA MONGE,

Debtors.

JOE JESSE MONGE and
ROSANA ELENA MONGE,

Plaintiff,

v

ALICIA ROJAS and FRANCISCO
JAVIER JAYME,

Defendants,

CASE NO: 09-30881-lmc

CHAPTER 11

ADVERSARY NO. _____

**COMPLAINT TO RECOVER AND FOR TURNOVER OF PROPERTY AND TO
DETERMINE NATURE, EXTENT AND VALIDITY OF LIENS AND FOR DAMAGES**

TO THE HONORABLE LEIF M. CLARK, UNITED STATES BANKRUPTCY JUDGE:

Come now, Joe Jesse Monge and Rosana Elena Monge, Plaintiffs/Debtors in the above-entitled and numbered case by and through Sidney J. Diamond, of Sidney Diamond, P.C., their attorney and files this Complaint to Recover and for Turnover of Property and to Determine the Nature, Extent and Validity of Lien and For Damages and in support thereof would respectfully show the Court as follows:

1. This is an action brought by the Plaintiffs as Debtors-in-Possession in the above-captioned bankruptcy proceeding to recover and for turnover of property and to determine nature, extent and validity of liens and for damages pursuant to the provisions of 11 U.S.C. §542.

2. On or about April 27, 2009, the Plaintiffs/Debtors, Joe Jesse Monge and Rosana Elena Monge, filed a voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code, 11

**COMPLAINT TO DETERMINE NATURE, EXTENT AND VALIDITY OF LIENS, TO
AVOID SECURITY INTEREST AND FOR DAMAGES - Page - 1**

U.S.C. 1101, et seq. which is presently pending. The Debtors are subject to the jurisdiction of this Court pursuant to his filing of the above-captioned Chapter 11 case. No trustee has been appointed in this Chapter 11 case

3. Jurisdiction over this adversary proceeding is under 18 U.S.C. 544 (a)(1). This is a core proceeding under 28 U.S.C. 157(b)(2)(A)(K) & (O) and 11 U.S.C. 544(a)(1).

4. Venue is proper under 28 U.S.C. 1409(a)

5. Upon information and belief, Defendants Alicia Rojas and Francisco Javier Jayme are husband and wife whose address is 105 Thoroughbred Court, Santa Teresa, New Mexico 88008-9130 and may be served under F.R. Bankr. P. 7004 via First Class U.S. Mail. Alicia Rojas and Francisco Javier Jayme were listed as creditors of Plaintiffs/Debtors.

6. On February 1, 2006, Plaintiffs purchased the house and lot located at 105 Thoroughbred Court, Santa Teresa, NM for the purchase price of \$607,500.00 from Francisco J. Jayme. Plaintiffs claim ownership of the real property located at 105 Thoroughbred Court, Santa Teresa, New Mexico.

7. On February 3, 2005, Alicia Rojas entered into a rental agreement with Plaintiffs wherein she agreed to rent the house in an amount equal to the monthly mortgage payment of approximately \$7,019.19 per month to include escrow and to pay all expenses and utilities with an option to purchase the house in one year. Alicia Rojas failed to make the rent payments as agreed and has defaulted on the rental agreement. Alicia Rojas and Francisco J. Jayme have lived in the property but have not made the rent payments as agreed and the contract has since expired. Plaintiffs, Joe Jesse Monge and Rosana Elena Monge claim that they are presently owed the approximate amount of \$28,076.76 from Defendants.

8. Plaintiffs are entitled to a judgment for the amounts Defendants are in default, plus costs, attorney's fees, any damages to the home and past due interest on the loan.

9. Additionally, Plaintiffs are entitled to damages pursuant to the provisions of 11 U.S.C. §542.

10. Plaintiffs request that Defendants be required to immediately turn over the property to Plaintiffs.

WHEREFORE, PLAINTIFFS RESPECTFULLY REQUEST THE FOLLOWING RELIEF:

1. Entry of an order determining that Plaintiffs are the owners of the property located at 105 Thoroughbred Court, Santa Teresa, NM and entitled to rental payments for 1 year and additional rental payments for each month succeeding the month after the expiration of the lease;

2. Entry of an order ordering Defendants to turn over the property at 105 Thoroughbred Court, Santa Teresa, NM to Plaintiffs.

3. An Order determining the amount of damages caused by Defendants' violation of the automatic stay, and entry of a judgment in said amount against the Defendants in favor of the Plaintiffs; and

4. For such other and further relief to which Plaintiffs may show themselves justly entitled.

DATED: June 14, 2010.

Respectfully submitted,

SIDNEY DIAMOND, P.C.

/s/ Sidney J. Diamond
By: Sidney J. Diamond
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